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9 UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 NORTHERN CALIFORNIA GLAZIERS,  
ARCHITECTURAL METAL AND GLASS  
12 WORKERS PENSION PLAN, et al.

13 Plaintiffs,

14 v.

15 HAYWARD GLASS COMPANY, INC., a  
California Corporation, and DAVID BRIAN  
16 TAUSHECK, an individual, and MARY  
TAUSHECK, an individual,

17 Defendants.  
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Case No.: C11-4926 LB

**NOTICE OF ACKNOWLEDGMENT  
AND JUDGMENT PURSUANT TO  
STIPULATION**

19 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the  
20 parties hereto, that Judgment shall be entered in the within action in favor of the Plaintiffs  
21 NORTHERN CALIFORNIA GLAZIERS, ARCHITECTURAL METAL AND GLASS  
22 WORKERS PENSION PLAN, et al. (collectively “Plaintiffs” or “Trust Funds”) and against  
23 Defendants HAYWARD GLASS COMPANY, INC., a California Corporation, and DAVID  
24 BRIAN TAUSHECK, an Individual, and/or alter egos and/or successor entities (collectively  
25 “Defendants”), as follows:

26 1. Defendants entered into a valid Collective Bargaining Agreement with the  
27 Northern California Glaziers Master Agreement (“Bargaining Agreement”) between District  
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Council 16 and the Northern California Glass Management Association (hereinafter "Bargaining Agreement"). This Bargaining Agreement has continued in full force and effect to the present time.

2. David Brian Tausheck, as an individual Defendant, and in his capacity as RMO/CEO/President of Defendant Hayward Glass Company, Inc., hereby acknowledges that he is authorized to receive service and has received the following documents in this action: Summons; Complaint; Dispute Resolution Procedures in the Northern District of California; Order Setting Initial Case Management Conference and ADR Deadlines; Standing Order for United States Magistrate Judge Laurel Beeler; Standing Order for All Judges of the Northern District of California; Instructions for Completion of ADR Forms Regarding Selection of an ADR Process; Stipulation and [Proposed Order] Selecting ADR Process; Notice of Need for ADR Phone Conference; ADR Certification by Parties and Counsel; Notice of Assignment to a Magistrate Judge, Consent, Declination; ECF Registration Information Handout; Welcome to the Oakland Divisional Office of the United States District Court; and Certification of Interested Entities or Persons Pursuant to Civil Local Rule 3-16.

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3. Defendants have become indebted to the Trust Funds as follows:

7/11	Contributions	\$23,803.34	
	20% Liquidated Damages	\$4,760.67	
	5% p/a Interest (9/1/11-10/13/11)	\$140.21	
			\$28,704.22
8/11	Contributions	\$25,086.18	
	20% Liquidated Damages	\$5,017.24	
	5% p/a Interest (10/1/11-10/13/11)	\$44.67	
			\$30,148.09
9/11	Contributions	\$19,199.09	
	20% Liquidated Damages	\$3,839.82	
			\$23,038.91
Audit (1/1/08-1/31/11)			
	Contribution Underpayments	\$6,320.99	
	Interest (through 6/30/11)	\$434.62	
	5% p/a Interest (7/1/11-10/13/11)	\$90.92	
	20% Liquidated damages *	\$1,264.20	
	Improper Payments (Credit)	<\$167.37>	
			\$7,943.36
	Attorney's Fees (8/11/11-10/11/11)		\$2,662.00
	Cost of Suit		\$350.00
	<b>TOTAL</b>		<b>\$92,846.58</b>

\* Liquidated damages in the audit are shown as \$750.00. However, per the provisions of the Trust Agreements, liquidated damages increase to 20% upon the commencement of litigation.

4. Defendants shall *conditionally* pay the amount of **\$77,964.65**, representing all of the above amounts, less liquidated damages in the amount of **\$14,881.93**. *This conditional waiver is expressly conditioned upon Trustee approval following timely compliance with all of the terms of this Stipulation*, as follows:

(a) Beginning on **November 15, 2011**, and on or before the 15th day of each month thereafter for a period of twelve (12) months through and including October 15, 2012, Defendants shall pay to Plaintiffs the amount of **\$6,800.00** per month.

(b) Payments may be made by joint check, to be endorsed to Plaintiffs prior to submission. Defendants shall have the right to increase the monthly payments at any time and there is no penalty for prepayment.

(c) Payments shall be applied first to unpaid interest and then to unpaid principal. The unpaid principal balance shall bear interest from October 14, 2011, at the rate of 5%

1 per annum in accordance with the Collective Bargaining Agreement and Plaintiffs' Trust  
2 Agreements.

3 (d) Checks shall be made payable to the *District Council 16 Health & Welfare*  
4 *Trust Fund*, and delivered on or before each due date to Blake E. Williams at Saltzman & Johnson  
5 Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such  
6 other address as may be specified by Plaintiffs.

7 (e) At the time that Defendants make their 11th payment, Defendants may  
8 submit a written request for waiver of liquidated damages directed to the Board of Trustees, but  
9 sent to Saltzman and Johnson Law Corporation with their 11th payment. Defendants will be  
10 advised as to whether or not the waiver has been granted prior to the final payment hereunder.  
11 Such waiver will not be considered until and unless all other amounts are paid in full and  
12 Defendants' account is current.

13 (f) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise  
14 Defendants, in writing, as to the final amount due, including interest and all additional attorneys'  
15 fees and costs incurred by Plaintiffs in connection with collection and allocation of the amounts  
16 owed to Plaintiffs under this Stipulation. Defendants shall pay all additional attorneys' fees and  
17 costs regardless of whether or not Defendants default herein. Any additional amounts due  
18 pursuant to the provisions hereunder shall also be paid in full with the October 15, 2012 stipulated  
19 payment.

20 (g) Failure to comply with any of the above terms shall constitute a default of  
21 the obligations under this Agreement and the provisions of ¶11 shall apply.

22 5. In the event that any check is not timely submitted or fails to clear the bank, or is  
23 unable to be negotiated for any reason for which Defendants are responsible, Defendants shall be  
24 considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a written  
25 demand to Defendants to cure said default *within seven (7) days of the date of the notice from*  
26 *Plaintiffs*. If caused by a failed check, default will only be cured by the issuance of a replacement  
27 *cashier's check*, delivered to Saltzman and Johnson Law Corporation within the seven (7) day  
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1 cure period. If Defendants elect to cure said default, and Plaintiffs elect to accept future payments,  
2 *all such future payments shall be made by cashier's check* at Plaintiffs' request. In the event  
3 default is not cured, all amounts remaining due hereunder shall be due and payable on demand by  
4 Plaintiffs.

5 6. Beginning with contributions due for hours worked by Defendants' employees  
6 during the month of October 2011, due on November 15, 2011 and delinquent if not received by  
7 the Trust Funds before the last business day of the month, and for every month thereafter until this  
8 Judgment is satisfied, **Defendants shall remain current in contributions** due to Plaintiffs under  
9 the current Collective Bargaining Agreement and under all subsequent Collective Bargaining  
10 Agreements, if any, and the Declarations of Trust as amended. Defendants shall fax a copy of its  
11 contribution report for each month, together with a copy of that payment check, *to Blake E.*  
12 *Williams at 415-882-9287*, prior to sending the payment to the Trust Fund office.

13 Failure to comply with these terms shall also constitute a default of the obligations under  
14 this Agreement and the provisions of ¶ 11 shall apply.

15 7. Defendants shall make full disclosure of all jobs on which they are working by  
16 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, the  
17 name and address of the job, the start and completion dates, the identity of General  
18 Contractor/Owner/Developer, and by providing certified payroll if it is a public works job. To the  
19 extent that Defendant is working on a Public Works job, or any other job for which Certified  
20 Payroll Reports are required, copies of said Reports *will be faxed to Blake E. Williams*  
21 concurrently with its submission to the General Contractor, Owner or other reporting agency.

22 These requirements are concurrent with, and in addition to, the requirements set forth  
23 above. Defendants shall fax said updated list each month (or sooner if required elsewhere herein)  
24 together with the contribution report (as required by ¶6 of this Stipulation) *to Blake E. Williams at*  
25 *415-882-9287*, on before the 15<sup>th</sup> day of each month. Attached hereto as *Exhibit A* is a Job Report  
26 Form which is to be completed each month.

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1           8. Failure to comply with any of the above terms shall constitute a default of the  
2 obligations under this Agreement and the provisions of ¶11 shall apply. Any unpaid or late paid  
3 contributions, together with 20% liquidated damages and 5% per annum interest accrued on the  
4 contributions, pursuant to the Trust Agreements, shall be added to and become a part of this  
5 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the  
6 applicable Bargaining Agreement and Declarations of Trust of the Trust Funds for collection of  
7 current and future contributions, and for any additional past contributions not included herein as  
8 may be determined by Plaintiffs, pursuant to employee timecards or paystubs, by audit, or other  
9 means, and the provisions of this agreement are in addition thereto. Defendants specifically waive  
10 the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

11           9. DAVID BRIAN TAUSHECK acknowledges that he is the RMO/CEO/President  
12 and a principal shareholder of HAYWARD GLASS COMPANY, INC., and that he specifically  
13 consents to the Court's jurisdiction as well as the use of a Magistrate Judge for all proceedings  
14 herein. Mr. Tausheck (hereinafter "Guarantor") also confirms that he is personally guaranteeing  
15 the amounts due pursuant to the terms of this Stipulation and further acknowledges that all  
16 affiliates, related entities and successors in interest to HAYWARD GLASS COMPANY, INC.  
17 and/or any subsequent entity wherein Mr. Tausheck is a principal, officer, owner, or possesses any  
18 ownership interest shall also be bound by the terms of this Stipulation as Guarantors, and also  
19 consents to this Court's jurisdiction as well as the use of a Magistrate Judge. All such entities  
20 shall specifically consent to the terms herein and to the Court's jurisdiction, in writing at the time  
21 of any assignment, affiliation or purchase.

22           10. Prior to the last payment pursuant to this Judgment Pursuant to Stipulation,  
23 Plaintiffs shall advise Defendants/Guarantor, in writing, as to the final lump sum amount due,  
24 including interest and all additional attorneys' fees and costs incurred by Plaintiffs in connection  
25 with collection and allocation of the amounts owed to Plaintiffs under this Stipulation as set forth  
26 above. Any additional amounts due pursuant to the provisions hereunder shall also be paid in full  
27 with the October 15, 2012 stipulated payment.

11. In the event that Defendants/Guarantor fail to make any payment required under ¶4 above, or otherwise default on their obligations as detailed in this Stipulation, and such default is not timely cured, the following will occur:

(a) The entire balance of **\$92,846.58**, as specified in ¶3, plus interest, but reduced by principal payments received from Defendants/Guarantor, in addition to any unpaid contributions then due plus 20% liquidated damages and 5% per annum interest on the unpaid or late paid contributions, shall be immediately due and payable, together with any attorneys' fees and costs incurred during the term of this Stipulation;

(b) A Writ of Execution may be obtained against Defendants/Guarantor without further notice to Defendants/Guarantor, in the amount of the unpaid balance plus any additional amounts due under the terms herein. Such Writ of Execution may be obtained solely upon declaration by a duly authorized representative of the Plaintiffs setting forth any payment theretofore made by or on behalf of Defendants/Guarantor and the balance due and owing as of the date of default.

(c) Defendants/Guarantor waive any notice of Entry of Judgment or of any Request for a Writ of Execution upon default, and expressly waive all rights to stay of execution and appeal. The declaration or affidavit of a duly authorized representative of Plaintiffs as to the balance due and owing as of the date of default shall be sufficient to secure the issuance of a Writ of Execution, without notice to Defendants/Guarantor.

(d) Defendants/Guarantor shall pay all additional attorneys' fees and costs incurred by Plaintiffs in connection with collection and allocation of the amounts owed by Defendants/Guarantor to Plaintiffs under this Stipulation, whether or not a default occurs herein.

12. Any failure on the part of the Plaintiffs to take any action against Defendants/Guarantor as provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed a waiver of any subsequent breach by the Defendants/Guarantor of any provisions herein.

13. In the event of the filing of a bankruptcy petition by Defendants/Guarantor, the



1 parties agree that any payments made pursuant to the terms of this Judgment, shall be deemed to  
2 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)  
3 and shall not be claimed by Defendants/Guarantor as a preference under 11 U.S.C. Section 547 or  
4 otherwise. Defendants/Guarantor nevertheless represent that no bankruptcy filing is anticipated.

5 14. Should any provision of this Stipulation be declared or determined by any court of  
6 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and  
7 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said  
8 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this  
9 Stipulation.

10 15. This Stipulation is limited to the agreement between the parties with respect to the  
11 delinquent contributions and related sums enumerated herein, owed by Defendants/Guarantor to  
12 the Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.  
13 Defendants/Guarantor acknowledge that the Plaintiffs expressly reserve their right to pursue  
14 withdrawal liability claims, if any, against Defendants/Guarantor and all of their control group  
15 members, as provided by the Plaintiffs' Plan Documents, Trust Agreements incorporated into their  
16 Collective Bargaining Agreement, and applicable laws and regulations.

17 16. This Stipulation contains all of the terms agreed by the parties and no other  
18 agreements have been made. Any changes to this Stipulation shall be effective only if made in  
19 writing and signed by all parties hereto.

20 17. This Stipulation may be executed in any number of counterparts and by facsimile,  
21 each of which shall be deemed an original and all of which shall constitute the same instrument.

22 18. Defendants/Guarantor represent and warrant that they have had the opportunity to  
23 be or have been represented by counsel of their own choosing in connection with entering this  
24 Stipulation under the terms and conditions set forth herein, that they have read this Agreement  
25 with care and is fully aware of and represent that they enter into this Stipulation voluntarily and  
26 without duress.

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19. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment is satisfied. Upon execution of this Stipulation by the parties identified below, Plaintiffs stipulate and agree that they will immediately file a voluntary dismissal without prejudice of Defendant Mary Tausheck individually from the above entitled matter.

Dated: October 14, 2011

**HAYWARD GLASS COMPANY, INC.**

By: /S/David Brian Tausheck  
David Brian Tausheck  
RMO/CEO/President

Dated: October 14, 2011

**DAVID BRIAN TAUSHECK**

/S/David Brian Tausheck  
Individually, as Personal Guarantor

Dated: October 14, 2011

**DAVID BRIAN TAUSHECK**

/S/David Brian Tausheck  
Individual Defendant

Dated: October 17, 2011

**SALTZMAN AND JOHNSON LAW CORPORATION**

By: /S/Blake E. Williams  
Blake E. Williams  
Attorneys for Plaintiffs

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

Dated: October 28, 2011



**EXHIBIT A****JUDGMENT PURSUANT TO STIPULATION*****JOB REPORT FORM***

\*\*\* Updated report must be faxed to Blake E. Williams, Esq., at (415) 882-9287  
on the 15<sup>th</sup> day of each month \*\*\*

Employer Name: HAYWARD GLASS COMPANY, INC.

Report for the month of \_\_\_\_\_ Submitted by: \_\_\_\_\_

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

\*\*\* Attach additional sheets as necessary \*\*\*